Supreme Court, U.S.
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No. 05-110

IN THE

United States Supreme Court

JOSEPHINE TUSANEZA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Court of Appeals appears in Westlaw as 116 Fed. Appx. 304, 2004 WL 2634482 (2nd Cir. 2004), and in the Appendix as 1a-5a.[1] In that Order, the Second Circuit affirmed the judgment of the United States District Court, Southern District of New York, entered on December 8, 2003, convicting her, after a jury trial, of conspiracy to commit money laundering (18 U.S.C. § 1956(h)) and one substantive count of money laundering (18 U.S.C. § 1956(a)(3)(b)), and sentencing her to a term of twenty-four months of imprisonment.

In that Order, the Second Circuit rejected Petitioner's argument that the evidence was legally insufficient insofar as it relied upon a novel, unwarranted application of the money laundering statute. Among other things, Petitioner had maintained that, rather than allege she had concealed the source of criminal proceeds in a financial transaction, the government had merely alleged that she had concealed the secret use of criminal proceeds to guarantee *other* property that was involved in the financial transaction. The Second Circuit did not directly address this argument.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The Order of the Court of Appeals sought to be reviewed was filed on November 19, 2004. A petition for rehearing was denied on March 9, 2005. Accordingly, this

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[1] Numbers preceded by "A" are references to the Appendix submitted to the Second Circuit.

Petition for a Writ of Certiorari is timely, pursuant to U.S. Sup. Ct. Rule 13, 28 U.S.C. § 1254.

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1956(a)(1):

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity –
>
> (B) knowing that the transaction is designed in whole or in part –
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity *** shall be sentenced ****

STATEMENT OF THE CASE

This case raises an important question concerning the scope of the money laundering statute: specifically, whether the money laundering statute is so broad as to include concealment of criminal proceeds that were not actually used in a "financial transaction," but at most were secretly guaranteeing *other* property that was used in such a transaction. Research has not found any other cases where the money laundering statute was ever used in such an expansive, dangerous manner.

The Government's Case

Preliminary events

The government's basic theory was that Petitioner agreed to pledge her property on behalf of Marcos Gonzalez and pose as his friend, so that he could be released on bail in his state prosecution for narcotics offenses. The crux of the money laundering claim was that Petitioner had secretly been paid $250,000 by Gonzalez's brother, Victor, to guarantee her that the property would not be defaulted, with the understanding that her property would be transferred to him after the state court proceedings concluded, thereby deceiving the state court into believing that Petitioner was at risk should the state defendant flee. And although Victor never told Petitioner that the $250,000 represented criminal proceeds, co-conspirators acknowledged in plea allocutions that they suspected that the money resulted from narcotics transactions. Thus, two key issues at trial and on appeal were whether Petitioner knew that the money represented proceeds and, even if she did, whether her conduct amounted to money laundering, since there was no allegation that the property she actually used in the bail proceeding represented criminal proceeds.

The relevant events began in August, 1997, when Marcos Gonzalez (hereinafter "Marcos") was arrested in Westchester County for possession of cocaine. Subsequently, the state court set bail at $250,000. At Marcos' direction, Victor visited certain bail bondsmen, including Danny Gonzalez. T239-40. In his plea allocution, Danny Gonzalez recounted that he advised Victor that he would need more than just a house to collateralize the $250,000. When Danny asked how much money he could raise, Victor said $150,000 at first, and then indicated the entire $250,000, which made Danny suspect that Victor was a drug dealer.

T586. At a later meeting, Danny told Victor that they "needed some kind of property." When Victor said he had no property, Danny told him how to get some property. T241. According to his allocution, Danny also advised Victor how to avoid an inquiry by the court, explaining that he should get five signatures. T586.

Victor searched for someone who was willing to sell their house, while keeping it in their name. This arrangement was necessary, Victor testified, "[b]ecause it wouldn't look right that I showed up with a house that was – that I had just bought. It wouldn't look right, and I couldn't have anything in my name." T243. Eventually, someone referred Victor to Petitioner and her husband Tony, as they reportedly owned a house at 274 Park Hill Avenue. T243.

During their meeting, Victor told Petitioner and Tony that he was there to buy their house, initially without saying anything about a bail package. Victor knew that they had no idea that he was going to propose "any kind of illegal proposition [about] putting up bail." T402. Subsequently, Victor told them that his brother was charged with possession of narcotics, and that he needed them to sign a bail package as a condition to the sale. T402-04.

Victor stated that:

> "her husband did most of the talking and I offered to buy the house, but that I needed for them to sign a bail package. That's the only way that I would be able to buy the house. And they told me that why didn't I just buy it, and then go, take the package myself in my name, the house myself. I told them that I couldn't do that, that it needed to be in their name because it had to be somebody that owned the property for a while.

> We also went over the price. They told me that they wanted $250,000 for the house." T245.

But Victor added, "I didn't tell him it was illegal. I didn't want to scare them. I just told them I needed to buy the house and one of the things I needed for them to do was to sign the bail." (emphasis added). T406. In addition, Victor also admitted that *he did not mention the amount of drugs his brother was alleged to have possessed.* T406.

At a subsequent meeting, Tony told Victor he would do the deal, against his lawyer's advice, because he trusted Victor. T246; 410. Petitioner also mentioned to Victor that there were one or two mortgages on the house, but Victor was not concerned, assuming that the bondsman would check everything out. T411-12. Victor advised them that, since the property was in Petitioner's name, she would have to go to Danny's office and sign paperwork there, and testify for Marcos at the bail hearing. T247, 410. According to Victor, either Petitioner suggested, or the two of them "thought up," that if she had to testify, she would say that she knew Marcos, and was willing to pledge her property as collateral, because he was a tenant in her buildings. T247.

Also testifying for the government was Anthony Briguglio, a real estate and bankruptcy attorney who had represented Petitioner and her husband on prior matters. Briguglio recalled that, sometime in March, 1998, Tony asked him about being able to use property to post a bond for someone. Briguglio observed that any company would perform a title search, which would reveal the property's mortgages. T195-987. Later, Briguglio received a fax, which included a handwritten cover page referring to "Sale 274 Park Hill Ave, Yonkers, NY." Also on that page was a notation indicating that a deed was attached to the fax and

asking Briguglio to contact Danny Gonzalez or Orlando at Associated Bail Services about Marcos Gonzalez. The fax cover page stated that it was from Tony Tusaneza. T179-81. Since he and Tony had not discussed selling the property during their conversation, T182, though, Briguglio had no explanation why the fax referred to a sale.[2] T183. After receiving that fax, Briguglio left a message at Associated Bail Service, but did not hear back. Months later, Tony told Briguglio that the bail company had accepted the 274 Park Hill property as collateral. T191.

The transactions

According to Victor, after one of the prior meetings, he met Petitioner alone and brought her a gym bag containing $250,000. Victor admitted that the money was derived from distributing drugs, though he did not disclose that to her. T249. He testified that:

> "We went over the specifics against about signing over the title, 'cause I didn't want her to sign it over right away. It was going to stay in her name and she was going to pay off the mortgage slowly because she didn't want the government, any problems with the government. And after everything was taken care of and my brother was released, eventually she was going to sign over the house to me." T248, 405-06, 414-17.

Victor understood Petitioner's phrase "problems with the government" was a reference to problems with the IRS arising out of paying the mortgage off right away. T249.

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[2] Petitioner testified that the fax referred to a sale because there was an attachment referring to her own purchase of the property. T686-87.

As part of the arrangement, Victor paid Danny Gonzalez and Orlando Valle $275,000, who in turn assured him that they would not go after the property if Marcos fled. Victor remarked, "I asked them, because I had given Petitioner and her husband my word that nothing was going to happen to their credit or the house." T272; *see also*, T250, 585-86. The total amount Victor was supposed to pay Danny and Orlando was $300,000, representing $250,000 for the house and another $50,000 for Danny. Instead of $300,000, though, Victor only paid $275,000, in several stages. Victor did not pay the full $300,000 because he did not trust Danny and thought he might "try to go after the house anyway once [his] brother left." So, Victor "held back that last 25 just to be able to negotiate with him." T253.

In their allocutions, Gonzalez, Berretta and Orlando Valle all indicated that they "suspected," "believed" or thought that at least some of the money was the proceeds of narcotics transactions. T586, 589, 592. Importantly, however, *Victor never testified that he told Petitioner or her husband that he was paying for her property with proceeds of any illegal activity. Nor did anyone else testify that they advised Petitioner or her husband about the source of the money.*

In any event, after Victor paid the money to them and indicated that he had the property, Daniel Gonzalez, Orlando and Robert Berretta decided to pay $100,000 to International Fidelity, and hold back the other $150,000. T586, 589-90. Thus, by the time he "accepted the house," he had already received $275,000 in proceeds from the illegal transactions to collateralize the bail. Gonzalez admitted that he accepted the house just "to help hide the money." T587-88.